

**ORDER NO. 90342**

Retail Gas and Electric Supply Offers to Low-Income Customers	*	Administrative Docket PC55
	*	
	*	_____
	*	
COMAR 20.51, 20.53, 20.54, and 20.59	*	RM78
_____	*	_____

**Issue Date: September 2, 2022**

**NOTICE INITIATING RULEMAKING AND DIRECTING IMPLEMENTATION  
MEASURES FOR NEW LOW-INCOME GAS AND ELECTRIC RESIDENTIAL  
SUPPLY PROTECTIONS**

1. On May 16, 2022, the Commission initiated Public Conference No 55 (“PC55”) and issued a Notice and Opportunity to Comment regarding the implementation of Chapter 637 (“Chapter 637”) of the Laws of Maryland (2021) which amended Public Utilities Article (“PUA”), *Annotated Code of Maryland*, § 4-308. In response, the Commission received stakeholder comments from 12 interested stakeholders.
2. After consideration of these comments, the Commission now initiates a rulemaking to develop regulations to implement Chapter 637. The Commission also directs Staff, the Competitive Markets and Customer Choice working group, and the EDI and XML<sup>1</sup> working groups to begin work as described below.

---

<sup>1</sup> The Electronic Data Interchange (“EDI”) and Extensible Markup Language (“XML”) working groups provide technical recommendations to the Commission regarding electronic transactions in the retail energy market.

## **Background**

3. On May 30, 2021, the General Assembly enacted Chapter 637 of the Laws of Maryland (2021), amending PUA § 4-308. Chapter 637 requires the Commission to establish an approval process for electricity or gas supply offers for households that receive energy assistance from office of Home Energy Programs (“OHEP”) – administered programs, with a statutory deadline of January 1, 2023, for establishing the approval process. Additionally, the statute establishes, effective July 1, 2023, minimum standards for energy assistance supply offers to energy assistance households and tasks the Commission with approving offers before suppliers may make them to customers.

4. On May 16, 2022, the Commission initiated PC55 to receive written comments regarding the implementation of Chapter 637.<sup>2</sup> The Commission requested that stakeholders provide comments, suggestions, and concerns on issues or procedures to be resolved ahead of implementation, including definitions, application processes, customer eligibility data sharing, relative valuation of SOS or gas commodity rates and supply offers, and reporting. The Commission also requested that stakeholders suggest procedural timelines for Commission action and stakeholder implementation including potential constraints that require coordination among stakeholders as well as general implementation issues.

5. The Maryland Office of People’s Counsel (“OPC”) filed proposed regulations for implementing Chapter 637, while other parties; comments were limited to concerns and

---

<sup>2</sup> Retail Gas and Electricity Supply Offers to Low-Income Customers, Notice of Public Conference and Opportunity to Comment, May 16, 2022.

suggestions. Maryland’s major investor-owned utilities each filed comments, with the Potomac Edison Company (“Potomac Edison”) and Baltimore Gas and Electric, Potomac Electric power Company, and Delmarva Power & Light Company (“Joint Exelon Utilities”) disagreeing with several of OPC’s proposed regulations. Washington Gas light Company (“Washington Gas”) and the Southern Maryland Electric Cooperative (“SMECO”) also submitted comments. Electricity and natural gas supply companies SFE Energy Maryland, Inc. and StateWise Energy Maryland (jointly “SFE Energy”) filed joint comments, as did the Retail Energy Supply Association with NRG Energy, Inc. (jointly “RESA”). Other parties submitting comments were the Cancer Support Foundation, Montgomery County, the National Consumer Law Center (“NCLC”), and the energy Supplier Reform Coalition (“Coalition”). The Commission Technical Staff (“Staff”) filed recommendations.

### **Stakeholder Comments and Recommendations**

#### **A. OPC**

6. OPC’s proposed regulations for implementing Chapter 637 would allow retail suppliers to file an application for Commission approval and would require that an application include “a copy of all contracting materials that will be used.”<sup>3</sup> Under OPC’s proposal, the Commission could approve applications subject to any conditions deemed appropriate, including that the supplier identify the energy assistance-approved offer as distinct from other supply products.<sup>4</sup>

---

<sup>3</sup> OPC Proposed Regulations at 5, 13.

<sup>4</sup> *Id.*

7. OPC's proposed regulations also would require utilities to create screening procedures to prevent enrollment of energy assistance households by unapproved retail suppliers.<sup>5</sup>

### **B. The Utilities**

8. The Joint Exelon Utilities proposed that the Commission establish a working group to provide recommendations on a series of issues, including the offer approval process as well as how and what information about energy assistance households will be communicated, and to whom.<sup>6</sup>

9. The Joint Exelon Utilities and Potomac Edison both argued that OPC's proposal unfairly places the burden and cost of enforcing the statute on utilities rather than suppliers.

10. Washington Gas stated that in order for both the utilities and the retail suppliers to be aware of a household's energy assistance status, the utilities will need to add a flag to an energy assistance household's account at the time they are enrolled by a supplier. According to Washington Gas, adding this flag would require a "Change Control" meeting to establish a new rejection code track rejected enrollments, enhance the daily transaction report, and create a new report to track data for the annual report, at a minimum.<sup>7</sup>

11. Washington Gas recommended that because of the limitations in utility databases and the timing of energy assistance enrollments, the Office of Home Energy Programs ("OHEP") is better suited to inform suppliers of which households are energy assistance

---

<sup>5</sup> OPC's comments, however, did not make specific recommendations for how this should be accomplished.

<sup>6</sup> Joint Exelon Utilities Comments at 2-3.

<sup>7</sup> Washington Gas Comments at 3.

households subject to the statute's offer restrictions. The Joint Exelon utilities also recommended that OHEP, not utilities, should provide data on customers to suppliers.

### **C. SFE Energy**

12. SFE Energy advocated for clear parameters for compliant supply offers and supporting documentation to help minimize the documentation required for each individual request and recommended that the Commission implement a "streamlined" administrative process for approval.<sup>8</sup> It also suggested that any concerns that arise with an application should be communicated to the supplier, who should then receive adequate time to supplement or clarify the cause of the concerns before the Commission makes a final decision to approve or deny the supplier's application.<sup>9</sup> SFE Energy proposed that a supplier submit a filing "evinced" its commitment to adhere to the product requirements."<sup>10</sup>

13. SFE Energy stated that household energy assistance status is private information and should not be widely shared.<sup>11</sup> It argued that the most straightforward way to identify energy assistance households is to require utilities to place blocks on those customers' accounts. For supply contracts existing before July 1, 2023, supply would continue for the duration of the contract, and the block on the account would prevent the customer from switching to a different, non-approved supplier during the existing contract term and after its expiration. For new contracts entered into after July 1, 2023, the block would prevent

---

<sup>8</sup> SFE Energy Comments at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> *Id.* at 2

<sup>11</sup> SFE Energy Comments at 7.

enrollment in non-approved offers. SFE Energy proposed that these account blocks would be removed promptly once a household stops receiving energy assistance and after the block has been on the account for 12 months, and suppliers with approved offers would have a specific code for the EDI enrollment transaction that would serve as verification that the supplier has an approved offer. Additionally, during supplier marketing, if a customer “affirmatively indicates” that they currently receive or have received energy assistance in the previous fiscal year, a supplier should end the sale if the supplier does not have approved offer.<sup>12</sup>

#### **D. RESA**

14. RESA Suggested that the Commission issue an order identifying how suppliers can apply for Commission approval, including confirmation of what information is needed in the applications.<sup>13</sup> RESA recommended that the application be posted on the commission’s website and that the Commission send suppliers notice of the order along with specific instructions for how to apply for approval. RESA’s proposed application materials include a description of the offer, its key terms, and a copy of the contract summary and of the contract itself.

15. RESA disagreed with OPC’s recommendation that the application include submission of all marketing, enrollment, and related materials, arguing that suppliers will not begin developing marketing materials until *after* they receive Commission approval.<sup>14</sup>

---

<sup>12</sup> *Id.* at 7-8.

<sup>13</sup> RESA Comments at 12-13.

<sup>14</sup> *Id.*

16. RESA proposed that the Commission start accepting applications in January 2023 and approve or deny applications within 30 days to allow suppliers sufficient time to begin marketing approved offers and communicate upcoming changes to supply to customers before the July 1, 2023, effective date.

17. RESA stated that, at present, retail suppliers do not know a customer or household's energy assistance status.<sup>15</sup> In order to help prevent customer confusion and what it describes as a "reverse" slam in July 2023, RESA recommended that the Commission direct utilities to provide suppliers with information as soon as possible to help identify which households received energy assistance. RESA suggested that four sets of information should be shared: current enrolled customers (sync lists); whether households that were enrolled between the present and July 1, 2023, receive energy assistance; which households currently on SOS receive energy assistance; and which households enroll or stop enrollment in energy assistance programs on an ongoing basis.

18. RESA outlined a set of four potential mechanisms for how utilities can share energy assistance history and status with suppliers, based in part on the Pennsylvania Public Utility Commission's experience implementing a similar program.<sup>16</sup>

19. First, utilities could add energy assistance participation to existing sync lists, which provide suppliers with information relating to their customers and are updated every month. RESA suggested that if sync lists are used as a way to share customer information, they should be updated weekly, beginning as soon as possible, so suppliers can identify current

---

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.* at 7, 13-16

energy assistance households and prepare to transition them before July 1, 2023, as necessary.

20. Second, utilities could update enrollment flags on applicable EDI and XML transactions to include information regarding a household's energy assistance status, including the most recent date the household received energy assistance, when suppliers submit enrollment transactions for new customers. In RESA's view, this will be necessary to implement shopping restrictions, allowing the utility to reject an incidental non-approved enrollment and send the supplier a notification via the EDI or XML identifying energy assistance status as the reason for the rejection.

21. Third, utilities could produce an energy assistance household list and provide it to suppliers to help them avoid making ineligible offers. The proposed energy assistance household lists would be updated weekly and, at a minimum, include the account name, the billing and service addresses the utility account and choice ID numbers, energy assistance status, and the date of the last energy assistance received. RESA contended that this customer information is necessary so that suppliers know they are not inadvertently enrolling energy assistance households who will need to be dropped, which also helps to avoid customer confusion by minimizing supply changes.

22. Fourth, pre-enrollment information should be updated to include energy assistance status. Unlike the other mechanisms outlined by RESA, updating pre-enrollment information would require amending the Cod of Maryland Regulations.



### **E. Commission Staff**

23. Staff recommended that the Commission post a form on its website to allow suppliers to demonstrate that their offers qualify for approval with rates below standard off service (“SOS”) or gas commodity rate.<sup>17</sup> Staff’s proposed application form<sup>18</sup> requires a supplier to list each service territory in which it will provide the energy assistance offer; the SOS or gas commodity price for each period throughout the term of the contract; and a complete copy of the current or application contract, including proof that rates will be charged at or below the SOS or gas commodity rate. As part of the approval process, Staff would review each contract and would allow suppliers to keep their contracts confidential if requested. Suppliers would all utilize the same application form and offers would be approved through the Commission’s standard administrative process.

24. Like RESA, Staff disagreed with OPC’s proposal that all contracting materials are necessary to approve a supplier application but acknowledged that such a requirement can be added to the application at a later date if it is found to be necessary or useful.<sup>19</sup>

25. Staff noted that, currently, only the utilities, OHEP, and individual customers have information about whether a given household receives or has received energy assistance.<sup>20</sup> Staff suggested that utilities are the primary source for information about which customers receive bill assistance, and that regulations could be implemented requiring this information be shared, with the customer’s consent, with suppliers through pre-enrollment

---

<sup>17</sup> Staff Comments at 3.

<sup>18</sup> *Id.* Attachments B & C.

<sup>19</sup> *Id.* at 2.

<sup>20</sup> Staff Comments at 4.

information. Staff also suggested that the Commission could require utilities to share household energy assistance information through individual transactions or through a secure portal and that utilities and suppliers will likely need to use electronic transactions between themselves to implement the statute. Staff noted that OHEP-based rejections are already necessary for supplier consolidated billing, and OPC’s proposal for dropping or modifying supply contracts once a household begins receiving energy assistance is similar to what will happen under supplier consolidated billing in the same situation.<sup>21</sup>

#### **F. Other Comments**

26. The Coalition stated that the intent of Chapter 637 is that OHEP-coded accounts be serviced only through SOS or a Commission-approved retail supply offer and that communication and compliance should occur automatically at the utility level.<sup>22</sup>

27. The Cancer Support Foundation urged the Commission to implement the protections of Chapter 637 in full.

28. NCLC did not make any specific recommendations, but noted that in Illinois, which has similar low-income customer protections, suppliers can apply to the Illinois Commerce Commission to offer a “savings guarantee program” that charges a lower rate than the incumbent utility, with the Commerce Commission then required to initiate a proceeding to consider the application.<sup>23</sup>

---

<sup>21</sup> *Id.* at 5.

<sup>22</sup> Coalition Comments at 2.

<sup>23</sup> NCLC Comments at 5.

29. Montgomery County stated that it is the Commission's role to determine the flow of information and responsibilities amongst the pertinent stakeholders.<sup>24</sup>

### **Commission Determination**

30. Having considered the stakeholder comments, the Commission finds that a rulemaking is necessary in order to implement the statutory objectives of the statute. The Commission now initiates RM 78 to consider the attached draft regulations. Comments on the proposed rules must be e-filed by October 19, 2022. The comments should be addressed to Andrew S. Johnston, Executive Secretary, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul Street, 16th Floor, Baltimore, Maryland 21202. The docket number (RM78) must appear in the subject line of the cover letter or the first page of the comments. The Commission will conduct an in-person rulemaking session on October 27, 2022, beginning at 10:00 a.m. in order to consider proposed revisions. If the Commission approves proposed regulations for publication they will be published in the *Maryland Register* for notice and comment.

31. Given the technical nature of some of the issues involved, stakeholders are encouraged to collaborate and reach agreement ahead of filing comments.

32. Staff is directed to develop a draft retail supplier application form that satisfies the requirements of the application process outline in the attached draft regulations. This draft application form should be submitted in comments in the RM78 process for

---

<sup>24</sup> Montgomery County Comments at 1.

Commission consideration and will be modified and finalized as directed by the Commission at the conclusion of the rulemaking proceedings.

33. Applications may be filed into PC55 beginning January 1, 2023. With a single location to review and inventory all potential contracts for energy assistance households', stakeholders will have a central location to easily access all Commission-approved supply offers. The Commission will schedule hearings on applications as part of its weekly administrative meetings.

34. The Commission directs the EDI and XML working groups to develop communication capabilities that would allow a utility to provide updated energy assistance household status to suppliers for their existing customers. If this capability cannot be developed before March 1, 2023, the Commission directs each utility with customers participating in retail supply to begin providing each retail supplier servicing customers, within the utility's service area, a list of any enrolled customers of that supplier meeting the regulatory definition of energy assistance household starting April 1, 2023, and provide an updated list every 30 days thereafter until the capability is functional.

35. The Commission also directs the Competitive Markets and Customer Choice working group to file, with the Commission, a proposed customer communications plan for informing existing and future retail supply customers impacted by the statute about coming changes. The plan should cover proposed communication changes by utilities and suppliers, and changes to the Commission's website.

36. Staff is directed to modify its contract summary form to include prohibitions on termination fees and rates above SOS for energy assistance households. Staff is further

directed to: (1) coordinate with stakeholders to ensure the availability and timely transmittal of the information necessary to meet the statutory reporting requirements; and (2) to coordinate with stakeholders and develop a process for keeping stakeholders informed of which suppliers have offers that have received approval from the Commission. If Staff deems Commission input or direction necessary in completing these tasks, it is directed to raise such concerns or issues in its comments filed in this rulemaking.

By Direction of the Commission,

*/s/ Andrew S. Johnston*

Andrew S. Johnston  
Executive Secretary